

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 08-1263

STACEY CORTER

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

Opinion Delivered April 1, 2009

APPEAL FROM THE STONE COUNTY
CIRCUIT COURT,
[NO. JV-2007-52]

HONORABLE LEE W. HARROD,
JUDGE

AFFIRMED; MOTION TO
WITHDRAW GRANTED

COURTNEY HUDSON HENRY, Judge

On August 21, 2008, the Circuit Court of Stone County entered an order terminating appellant Stacey Corter's parental rights to her three minor children, L.C., M.C., and J.C. Her attorney has filed a motion to withdraw pursuant to *Linker-Flores v. Arkansas Dep't of Human Servs.*, 359 Ark. 131, 194 S.W.3d 739 (2004), asserting that there are no issues of arguable merit to support the appeal. Under the recent revision to Rule 6-9(i)(1) of the Arkansas Rules of the Supreme Court and Court of Appeals, counsel's motion is accompanied by an abstract, addendum, and brief listing all adverse rulings made at the termination hearing and explaining why there is no meritorious ground for reversal to each ruling, including a discussion of the sufficiency of the evidence to support the termination order. *See In re Rules of the Supreme Court and Court of Appeals, Rules 6-9 and 6-10, 374*

Ark. App'x ____, ____, S.W.3d ____ (Sept. 25, 2008). The clerk of this court sent a copy of counsel's motion and brief to appellant, informing her that she had the right to file *pro se* points for reversal. *See* Ark. Sup. Ct. R. 6-9(i)(3). Appellant has filed a *pro se* list of points in response.

In terminating appellant's parental rights, the trial court found that all three children were adoptable and that it was in their best interest for appellant's parental rights to be terminated. Ark. Code Ann. § 9-27-341(b)(3)(A) (Repl. 2008). The trial court also found multiple statutory grounds for termination, although only one statutory ground is necessary to terminate parental rights. *Lee v. Arkansas Dep't of Human Servs.*, 102 Ark. App. 337, ____, S.W.3d ____ (2008). One of the statutory grounds for termination found by the trial court involves a parent who subjects her children to "aggravated circumstances." Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(A). The term "aggravated circumstances" means that a "juvenile has been abandoned, chronically abused, subjected to extreme or repeated cruelty, sexually abused, or a determination has been made by a judge that there is little likelihood that services to the family will result in successful reunification." Ark. Code Ann. § 9-27-341(b)(3)(B)(ix)(a)(3)(B)(i).

A heavy burden is placed upon a party seeking to terminate the parental relationship, and the facts warranting termination must be proven by clear and convincing evidence. *Strickland v. Arkansas Dep't of Human Servs.*, 103 Ark. App. 193, ____, S.W.3d ____ (2008). The question this court must answer is whether the trial court clearly erred in finding that

there was clear and convincing evidence of facts warranting the termination of parental rights. *Hall v. Arkansas Dep't of Human Servs.*, 101 Ark. App. 417, ___ S.W.3d ___ (2008).

Here, the trial court based its finding of aggravated circumstances on evidence that appellant failed to protect the children from her paramour, who sadistically and repeatedly abused the children by binding them with ropes; placing them in a hot room while dressed in winter clothing for extended periods of time; striking their toes with a hammer; hitting their hands with a fly swatter until they bled; and by making them stick their fingers in a running fan. J.C. bore the brunt of the abuse, as the beatings she endured caused scar tissue that obstructed her bowel, necessitating surgery. A parent has a duty to protect a child and can be found unfit even though she did not directly cause her child's injury. *Todd v. Arkansas Dep't of Human Servs.*, 85 Ark. App. 174, 151 S.W.3d 315 (2004). We are not able to say that the trial court's decision terminating appellant's parental rights is clearly erroneous.

In her *pro se* response to counsel's brief, appellant argues that she did not harm the children and that she complied with the case plan. She also argues that the caseworker was biased against her dating back to the time they were in high school together. Finally, she maintains that she has changed her life and could now be a better parent to her children. Appellant's arguments present no basis for reversal. It was not enough for appellant to refrain from personally harming the children. Instead, it was her duty to take affirmative

steps to protect her children from harm. *Sparkman v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 363, 242 S.W.3d 282 (2006); *Wright v. Arkansas Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). As for her argument that she complied with the case plan, we note that appellant failed to regularly attend counseling sessions. Even so, completion of the case plan alone is not determinative because what matters is whether completing the case plan achieved the intended result of making the parent capable of caring for the children. *Wright, supra*. Finally, even if appellant has taken positive and commendable steps to improve her life, this does not justify reversal. It is not clear when appellant began making efforts to improve her life. However, even if she began doing so before the termination hearing, her improvement and compliance toward the end of the case plan will not necessarily bar the termination of parental rights. *Meriweather v. Arkansas Dep't of Human Servs.*, 98 Ark. App. 328, 255 S.W.3d 505 (2007). Also, our review of the record reveals no bias on the part of the caseworker. In addition, this argument was not presented to the trial court. We do not reverse based on arguments that are raised for the first time on appeal. *Arkansas Dep't of Human Servs. v. Southerland*, 65 Ark. App. 97, 985 S.W.2d 336 (1999).

After carefully examining the record, we find that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit termination cases and conclude that the appeal is wholly without merit. Accordingly, we grant counsel's motion to withdraw and affirm the order terminating appellant's parental rights.

Affirmed; motion to withdraw granted.

PITTMAN and GLADWIN, JJ., agree.